IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1403 of 2007

LRS.OF TEJA RAM
V/S
STATE & ANR.

Mr. AS RATHORE, for the appellant / petitioner

Mr. ARVIND SHRIMALI for Mr. DD THANVI, for the respondent

Date of Order : 20.8.2007

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

The matter comes up for consideration of stay. However, looking to the nature of controversy, the appeal itself is being finally heard.

By the impugned order, the learned lower appellate Court has partly allowed the appeal, set aside the judgment and decree of the learned trial Court dated 13.8.1996, and remanded the matter back to the learned trial Court with a direction to hear the parties again on each issue, and express its opinion on each issue on the basis of the evidence that has come on record, and to decide the matter afresh. Obviously, no fresh opportunity has been given to either of the parties to produce any fresh material, or to produce any oral evidence. In that view of the matter, in view of the provisions of Order 41 Rule 24 CPC, it was duty

of the learned lower appellate Court to have itself decided the appeal on merits, instead of remanding the matter to the learned trial Court.

Accordingly, the appeal is allowed. Impugned order is set aside and the matter is sent back to the learned lower appellate Court with the direction to decide the appeal on merits by itself in accordance with law.

(N P GUPTA),J.

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